

**IN THE DRAWINGS**

Applicants acknowledge that the Examiner has accepted the drawings filed on July 24, 2001.

### REMARKS

Claims 1-3, 5, and 8 have been amended, and claims 12-20 have been added. Consequently, claims 1-20 are pending in the present application.

The Examiner rejects claims 1-3 and 5 under 35 U.S.C. 103(a) as being unpatentable over Shoobridge (U.S. 6,326,926) in view of Nacini (U.S. 5,233,643) and further in view of Berliner (U.S. 6,731,908). The Applicants respectfully traverse the rejection.

One or more embodiments of the present invention are directed to a method and apparatus for allowing data communications over a first protocol, such as an IEEE 802.11 protocol, and allowing management communications to be conducted over a second, different protocol, such as the Bluetooth protocol. Management communications, for example, may include updating system information of the access point, modifying system programming of the access point, modifying communications parameters (*e.g.*, security settings, IP addresses, etc.) of the access point, and the like. As explained in the patent application, one or more embodiments of the present invention are directed to providing a mechanism by which data communications and management communications can occur over different communications protocols. In one embodiment, the management communications is performed using a wireless communications protocol. *Id.* pages 5-6. This may be advantageous in an event the access point is located in a difficult to reach place, such as in the ceiling. *Id.* One or more of these inventive features are embodied in the claims, which are discussed next.

Claim 1 is directed to a method for conducting out of band management communications with an access point that conducts wireless data communications with mobile units using a first

protocol. The method comprises providing the access point with a radio module operating according to a second wireless communications protocol. The method further comprises conducting management communications with the access point using the second wireless communications protocol. Thus, according to claim 1, while the data communications occur using a first protocol, the management communications can be performed using a second wireless communications protocol.

It is well-settled that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. That is, there must be something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination. *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561 (Fed. Cir. 1986). In fact, the absence of a suggestion to combine is dispositive in an obviousness determination. *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573 (Fed. Cir. 1997). The mere fact that the prior art can be combined or modified does not make the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990); M.P.E.P. § 2143.01. Third, there must be a reasonable expectation of success. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); M.P.E.P. § 2142. A recent Federal Circuit

case emphasizes that, in an obviousness situation, the prior art must disclose each and every element of the claimed invention, and that any motivation to combine or modify the prior art must be based upon a suggestion in the prior art. *In re Lee*, 61 U.S.P.Q.2d 143 (Fed. Cir. 2002). Conclusory statements regarding common knowledge and common sense are insufficient to support a finding of obviousness. *Id.* at 1434-35.

Shoobridge is directed to a system that communicates with other devices using two different antenna arrangements, each providing its unique radiation pattern. Shoobridge, col. 4, lines 47-65. Shoobridge explains that one radiation pattern, such as a cone-shaped pattern, may be used by an access point to communicate with 802.11 devices, and another radiation pattern, such as a disk shaped pattern, may be used to communicate with Bluetooth devices. *Id.* The advantage of using different radiation patterns, according to Shoobridge, is to remove "interference" between 802.11 and Bluetooth transmissions. *Id.* at col. 2, lines 63-65. Shoobridge does not in any way teach or suggest performing management functions, much less teach or suggest performing data communications and management communications over two different protocols. Indeed, the Examiner admits that Shoobridge does not teach or disclose such a feature. See Office Action, page 3 (stating Shoobridge does not disclose conducting management communications).

The Examiner relies on Naeini to supposedly show this missing feature. In particular, the Examiner argues that Naeini teaches conducting out of band management communications and that such a teaching, in view of Shoobridge, would have been obvious to one of ordinary skill in the art. The Applicants respectfully disagree in view of the fact that the Examiner has failed to establish a *prima facie* of obviousness because (1) the cited references do not teach all of the

claimed features and (2) there is no requisite motion to combine the references in the manner suggested by the Examiner.

Claim 1, as noted, calls for conducting management communications with the access point using the second wireless communications protocol. Based on the plain language of the claim, and consistent with the description in the specification, the term "management communications" refers to communications relating to the management of the access point. Claim 18, for example, provides for various exemplary types of management communications, such as updating system information of the access point, modifying system programming of the access point, and modifying communications parameters of the access point.

None of the cited references, when considered alone or in combination, teach at least the claimed feature of conducting management communications with the access point using the second wireless communications protocol. As noted, the Examiner admits Shoobridge does not teach or suggest this feature. The Examiner argues that Naeimi, at col. 13, lines 32-33, teaches conducting management communications.

Naeimi is directed to telecommunications, and, in particular, to a system for providing cellular service to an area utilizing a unique time division multiplex technology. Naeimi, col. 1, lines 8-13. The passage cited by the Examiner describes one of various operations that may be performed by a portable transceiver that is utilized in the described cellular network of Naeimi. Specifically, the passage cited by the Examiner states "if the network is providing out-of-band communications management functions, the subscriber's transceiver is capable of redirecting, answering and otherwise managing in-band communications regardless of subscriber location." [emphasis supplied]. When this passage is considered in proper context, it becomes readily

apparent that it has no application to the claimed invention. In the context of cellular technology described in Naeimi, the Naeimi reference makes clear that the "out-of-band communications" mentioned therein are communications of a management nature that are useful for controlling in-band continuous telephonic communications. Naeimi, col. 1, line 65 to col. 2, line 1. As such, Naeimi clarifies, the out-of-band communications signals are accessible independent of location. *Id.* Thus, while Naeimi refers to "out-of-band communications," the passage cited by the Examiner containing these words does not describe conducting management communications with the access point (i.e., communications relating to the management of the access point) using a second protocol, as called for by claim 1. If anything, the cited passage is directed to an operation performed by a portable device (i.e., which would correspond to mobile units), and is not directed to communications relating to the management of the access point. Thus, for this reason, claim 1 is allowable.

Additionally, Naeimi fails to provide the requisite motivation to combine the references in the manner suggested by the Examiner. The Examiner argues that the requisite motivation is provided by Naeimi insofar as it states that the "subscriber's transceiver [is] capable of redirecting, answering and otherwise managing in-band communications regardless of subscriber location." *See* Office Action, page 3. The reason cited by the Examiner, however, provides no basis for combining the references in the manner suggested. As noted, the "out-of-band communications" referred to in Naeimi are made in the context of a cellular network. And in this context, the fact that a subscriber transceiver (i.e., the portable device or mobile unit) capable of redirecting or otherwise managing in-band communications regardless of subscriber location, is of no relevance to the claimed invention, which is directed to conducting management

communications with the access point over a second protocol. Thus, the fact that a portable transceiver is capable of providing select functionality regardless of its location provides no motivation to combine the references in the manner suggested by the Examiner. Thus, for this additional reason, claim 1 is allowable.

For at least the reasons cited above, claims depending from claim 1 are also allowable. The claims depending from claim 1 are further allowable for the additional features recited therein. For example, claim 2 specifies that the act of conducting management communications comprises at least one of configuring one or more resources of the access point and adjusting one or more parameters of the access point. None of the cited references teach or suggest this claimed feature.

Independent claim 8 is allowable for the features recited therein. For example, claim 8 calls for a second radio module operating using a second wireless communications protocol, different from said first protocol, for providing wireless management communications. None of the cited references, when considered alone or in combination, teach at least the aforementioned feature. As such, claim 8, as well as its dependent claims, is allowable.

Newly added claims are allowable for reasons recited therein. For example, claim 12 calls for a processor that is adapted to allow data communications with one or more remote devices over a first communications protocol. The processor is further adapted to allow access to one or more management features of the apparatus over a second communications protocol, wherein the second communications protocol is a wireless protocol and is different from the first

communications protocol. None of the cited references teach or suggest at least this recited feature. For this reason, claim 12, and the claims depending therefrom, is allowable.

Arguments with respect to other dependent claims have been noted. However, in view of the aforementioned arguments, these arguments are moot and therefore not specifically addressed. To the extent that characterizations of the prior art references or Applicants' claimed subject matter are not specifically addressed, it is to be understood that Applicants do not acquiesce to such characterization.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Houston, Texas telephone number (713) 934-4064 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

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